IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3380 OF 2004

Kiran Vasant Achrekar ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. Harshad Ponda with Mr. Vaibhav Krishna i/by Juris Consillion, for the Applicant.

Ms. P.H. Kantharia, A.P.P. with Ms. Rohini Salian, Special P.P. for the Respondent.

...

WITH

CRIMINAL APPLICATION NO. 4006 OF 2004

Hasmukh Pravinchandra Shah ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. A.P. Mundargi with Mr. Dipesh Mehta and Mr. S.V. Marwadi, for the Applicant.

Ms. P.H. Kantharia, A.P.P. with Ms. Rohini Salian, for the Respondent.

...

WITH

CRIMINAL APPLICATION NO. 4007 OF 2004

Shirish Madhukar Salvekar ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. A.P. Mundargi with Mr. Dipesh Mehta and Mr. S.V. Marwadi, for the Applicant.

Ms. P.H. Kantharia, A.P.P. with Ms. Rohini Salian, Special P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

12th October 2004

P.C.:

. Heard Mr. Ponda and Mr. Mundargi for the Applicants herein and Ms. Kantharia, A.P.P., for the State.

2. All these three Applications can be disposed of by common Judgment. The Applicant in the respective Application is named as accused

Nos. 6, 7 and 8 respectively in the MCOC Special Case No. 3/2003. After their arrest in connection with the said case, in relation to offence under the provisions of the Indian Penal Code and the Maharashtra Control of Organised Crimes Act, 1999 (hereinafter respectively referred to as "the IPC" and "the MCOCA"), they applied to the Designated Court constituted under the MCOCA and Prevention of Terrorists Activities Act, 2000, Greater Mumbai, for bail. That application was filed before the filing of the charge sheet against them, which was, however, rejected by the lower Court by order dated 22nd March 2004. Later on, they made fresh application for being released on interim bail to enable them to attend departmental enquiry initiated against them by their employer - Corporation. The lower Court acceded to the said request and released the Applicants on interim bail by order dated 12th April 2004. Later on, charge sheet has been filed on 23rd April 2004. As the interim bail was for limited duration, the Designated Court by order dated 6th August 2004 called upon the Applicants to surrender. Consequent to the aforesaid development, the

Applicants have rushed to this Court by way of present applications. Indeed, during the course of arguments, Counsel appearing for the Applicants stated that the Applicants were only pursuing the relief of regular bail under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") read with section 21(4) of the MCOCA. In any case, in my recent decision in the case of Anil Umrao Gote v. State of Maharashtra, Criminal Application No. 4023 of 2004, decided on 29th September 2004, I have taken the view that even while granting interim bail, the Court has to record satisfaction that the conditions provided for in section 21(4) of the MCOCA are fulfilled. If those conditions are not satisfied, the bar for releasing on bail operates. In view of the said decision, there is no basis to consider the request for release on interim bail in connection with offence under the MCOCA. Be that as it may, the present Judgment will dispose of the prayer for regular bail as pressed into service on behalf of the Applicants.

3. At one stage, when the hearing of the applications commenced, learned Special Public Prosecutor raised objection that as the Applicants were released on interim bail and have so far not surrendered, the question of hearing applications for relief of bail does not arise. In the context of the said objection, the Applicants appeared in the Court. It was submitted on behalf of the Applicants that since the Applicants accused have appeared in the Court, that may be considered as Applicants having surrendered before this Court and in which case, the Court can legitimately proceed to hear the applications on merits. Reliance was placed on the decision of the Apex Court reported in 1980 Cri.L.J. 426 in the case of Niranjan Singh and another v. Prabhakar Rajaram Kharote and others to buttress this position. In the said decision, the Apex Court had an occasion to consider the purport of expression ‘custody’ and went on to observe that where the accused has appeared and surrendered before the Court, the Court would have jurisdiction to consider the bail application, as the accused would be considered to have been in custody within the

meaning of section 439 of the Code.It is observed in the said decision that ‘custody’ in the context of section 439 of the Code is physical control or, at least, physical presence of the accused in the Court, coupled with the submission to the jurisdiction and orders of the Court; and in such a situation, he will be considered to be in judicial custody. Applying the same principle, as the Applicants have appeared and surrendered before the Court, I proceeded with the hearing of these Applications.

4. The Applicant - Accused No. 6 - was the Ward Officer of ‘A’ Ward during the relevant time between 10th January 2002 to 9th August 2002. The Applicant - Accused No. 7 - was the Executive Engineer during the relevant time in Building Proposal Department between 8th December 2002 to 3rd July 2003; and the Applicant - Accused No. 8 - was the Assistant Engineer during the relevant time in the Building Proposal Department from 2nd February 2001 till arrest in March 2004. The charge sheet filed against the Applicants is for offence punishable under section 120-B of the Code read with section 3(2)

and 24 of the MCOCA. The relevant portion as applicable to the Applicants herein reads thus :

> " That you accused No. 6 Kiran Vasant Achrekar, accused No. 7 Hasmukh Pravinchandra Shah and accused No. 8 Shirish Madhukar Salvekar and other officials of Municipal Corporation of Greater Mumbai between the year 2001 and March 2002 have entered into a criminal conspiracy by assisting accused No. 1 Abdul Rehman Abdul Gafoor Shaikh @ Rehman Boss, a member of organized crime syndicate headed by Dawood Ibrahim Kaskar, Iqbal Ibrahim Kaskar and Chhota Shakeel to construct shops illegally at Munim Compound, 16, Saboo Siddique Road, Musafirkhana, Mumbai, namely SAHARA Shoppee with the full knowledge that the property in question belong to Central Public Works Dept., reserved for municipal schools and garage. Further, you above named accused Nos. 6, 7 and 8 being public servants knowingly allowed and facilitated accused No. 1 Abdul Rehman Abdul Gafoor Shaikh @Rehman Boss to construct shops illegally on the plot reserved for municipal garage and municipal schools thereby rendered help and support to the members of organized crime syndicate and thereby committed offences punishable under section 120(B) IPC read with 3(2) and section 24 of MCOC Act, 1999.
>
> Secondly, you accused Nos. 6, 7 and 8 in furtherance of aforesaid criminal conspiracy did aid and abate and facilitate accused No. 5 namely Gulam Nabi Ramzan Tanwar, also a member of organized crime syndicate headed by Dawood Ibrahim Iqbal Kaskar and Chhota Shakeel in the illegal construction of shops at Plot No. 9, Saboo Siddiqui

> Road, namely, Central Ice & Cold Storage, Musafirkhana, Mumbai in the unlawful activities committed by the members of the organized crime syndicate for the pecuniary benefits for yourself and for the members of the organized crime syndicate, inspite of receipt of various complaints of underworld and unlawful activities and illegal constructions from various forums, did not take any action being public servants and rendered help and support by not taking any action in the commission of organized crimes with full knowledge and thereby committed offences punishable under section 120(B) IPC read with 3(2) and section 24 of MCOC Act, 1999."

However, during the course of arguments, it was argued that the Applicants are not concerned with the charge ‘Secondly’, as it pertains to illegal construction of shops at Plot No. 9, which happened in the year 1998. In that sense, the core issue that needs to be considered by this Court is whether there is sufficient material on record to form an opinion that there are reasonable grounds for believing that the Applicants are not guilty of offence under section 3(2) read with section 120-B and that they are not likely to commit any offence while on bail. The fulcrum of the prosecution case as against the Applicants is that they, along with the other officials of the Municipal Corporation,

entered into a criminal conspiracy by assisting accused No. 1, who was the member of organized crime syndicate, headed by Dawood Ibrahim Kaskar, Iqbal Kaskar and Chhota Shakeel, to construct shops at Munim Compound with the full knowledge that the property in question belonged to Central Public Works Department reserved for municipal schools and garage and that being public servants, knowingly allowed and facilitated accused No. 1 Abdul Rehman Abdul Gafoor Shaikh @ Rehman Boss to construct shops illegally on the plot reserved for municipal schools and garage, thereby rendered help and support to the members of the organized crime syndicate. It is on this allegation the Applicants are involved in the offence punishable under section 120-B of the Code read with section 3(2) of the MCOCA. The prosecution case is that each of the Applicant knowingly abdicated his duties which enabled the construction of shops illegally on the subject plot. The prosecution has relied on the circumstances, such as complaints made by Forum for Justice to the Municipal Commissioner and Chief Engineer, Vigilance; by one Babita Pawar, Office-bearer of Shiv Sena, addressed to the

Deputy Engineer, Building Proposal Department of ‘A’ Ward; another complaint addressed to the then Chief Minister. It is alleged that inspite of several complaints highlighting construction of shops illegally, no corrective steps were taken by the Applicants herein coupled with the fact that the Applicants provided incorrect information to the Joint Municipal Commissioner during his visit on the site and that the accused No. 6 made a report that no action was pending. It is the prosecution case that the Applicants were fully aware about the unauthorised construction carried on the site and had facilitated such construction activity. It is alleged that accused No. 6 reiterated the position that the construction on the site was undertaken as per the approval of Building Proposal Department. Besides the complaints referred to above, the prosecution has relied on the statements of witnesses implicating the Applicants. The affidavit in reply filed before this Court adverts to the gist of the statements given by the respective witnesses. The prosecution case is that the property on which the illegal construction activity was permitted

belonged to the C.P.W.D., which was rented to one Momin in the year 1939. The said Momin had expired in the year 1979. It is alleged that accused No. 1 Abdul Rehman @ Rehman Boss at the instance of accused No. 3 Iqbal Kaskar and his brother Dawood Ibrahim Kaskar illegally acquired the same. It is alleged that the Crime Branch has recorded the conversation between accused No. 3 and accused No. 2 and accused No. 5 and others, after taking due authorisation from the Additional Chief Secretary (Home) in the interest of public safety and to prevent incitement of offences under section 5(2)of the Indian Telegraph Act. It is the prosecution case that the prime accused have forcibly dispossessed the occupants and/or forcibly acquired the premises from them (occupants) by threatening and using the names of Chhota and Bada, referring to Chhota Shakeel and Dawood Ibrahim Kaskar. It is not necessary to dilate further on this aspect, because, for the present, we are concerned only with the involvement of accused Nos. 6, 7 and 8, who are the officials of the Greater Mumbai Municipal Corporation. Insofar as their role is concerned, the prosecution alleges that no new

construction could have been permitted on the subject land. It is alleged that, in fact all concerned officials, in the Corporation were aware that the premises were reserved for municipal schools and garage, and, in fact, possession thereof was offered to the Corporation, but the Corporation insisted for vacant possession. In such a situation, there was no question of permitting any construction activity on the said land at the instance of the Corporation. It is alleged that inspite of this position, the proposals submitted were entertained by the concerned officials which involved the Applicants herein. Besides, the proposal was only to carry out necessary repairs to the existing structures. Assuming that such a proposal could be legitimately entertained, it is the prosecution case that on the site, what has been allowed is construction of a new complex and not repairs to the existing structures as such. This was allowed to be done only because the concerned officials of the Corporation including the Applicants herein facilitated the same with the knowledge of the involvement of accused No.1 and other members of the organized crime

syndicate. Inspite of that, the officials issued completion certificate and turned a Nelson's eye to the unauthorised structures on the subject plot. The prosecution also relies on the circumstance that during the house search of the Applicant -accused No. 8 - unaccounted wealth of around Rs. 29 lakhs was recovered. The prosecution case against the present Applicants hinges upon the various circumstances including the complaints made by several persons from time to time inspite of which no corrective measures were taken, thereby allowing construction of unauthorised complex on the subject plot. It is the prosecution case that besides unauthorised structures erected on the subject plot, the officials of the Corporation conveniently overlooked the change of user of storage without approval of the competent authority, and, at present, there are about 370 illegal shops and 70 godowns on the site.

5. On the other hand, according to the Applicants, there is no material on record to show any connection of the Applicants with the organized crime syndicate or any member of the

organized crime syndicate or that the Applicants have continued association with the member of organized crime syndicate with knowledge of their activity and facilitated such activity. According to the Applicants, there is no material to show that the Applicants at any point of time were party to the unlawful activities of the organized crime syndicate in respect of using force or getting the property vacated or any such act committed by them before the file regarding the proposal submitted was processed by the Applicants or thereafter. The Applicants further submit that the proposal was submitted by the Architect, Rais & Co., at the instance of M/s. Global Marketing, who had authority to do so in terms of the Deed of Assignment executed by the original lessee. According to the Applicants, they had no reason to suspect the bona fides of the proposal submitted through the Architect, as it was supported by relevant documents. Moreover, it is contended that the Applicants had no connection with the prime accused, but the proposal was processed only by the Architect with whom they had occasion to interact in relation to the proposal. It is the case of the Applicants

that there is no material to show that any communication was entered by the Applicants herein directly with the members of the organized crime syndicate or, for that matter, accused Nos. 1 or 2 on the one hand and the Applicants on the other. The Applicants further contend that there is no material on record to show that the Applicants had knowledge of illegal activities of members of the organized crime syndicate. On the other hand, the Applicants were associated only with legal process of examining the proposal submitted by the Architect, Rais & Co., and each of the Applicants has discharged his duties as was required by the extant norms, notifications and circulars issued by the Corporation from time to time. Insofar as the unaccounted wealth recovered during the house search of Applicant - accused No. 8, is concerned, it is contended that there is no material on record to show that the said unaccounted wealth, which was recovered at the instance of the Applicant - accused No. 8, was in relation to any act of commission or omission regarding the unauthorised or illegal shops constructed or for showing any favour to the members of the organized crime syndicate.

6. In support of the above submissions, the learned Counsel appearing for the Applicants took me through the relevant documents on record filed along with the charge sheet as well as the relevant circulars. These are the broad submissions canvassed before me to contend that there is no material to connect any of the Applicants with the alleged offences.

7. Before I proceed to examine whether there are reasonable grounds for believing that the Applicants are not guilty of the alleged offence, I shall first deal with the technical argument canvassed on behalf of the Applicant - Accused No. 6. Mr. Ponda contends that this Applicant was arrested on 27th January 2004 and was in custody till released on interim bail. He submits that charge sheet has been filed on 23rd April 2004, which is well within the statutory period of 180 days, which was to expire on 26th July 2004. However, he contends that as no sanction was accorded by the appropriate authority under section 197 of the Code before

the expiry of 180 days, it was not open to the Designated Court to take cognizance of the offence against the said Applicant. It is his submission that by operation of law, as the Designated Court could not have taken cognizance of the offence against the Applicant - Accused No. 6, it would necessarily follow that after expiry of period of 180 days, on 26th July 2004, the Designated Court had no jurisdiction to order remand of the Applicant -Accused No. 6. According to Mr. Ponda, as the charge sheet was already filed, it was not a case under section 167 of the Code; and as no sanction was accorded, within the statutory period of 180 days, the Designated Court could not have invoked powers under section 309 of the Code. To buttress these submissions, reliance is placed on the decision of the Apex Court in the case of Natabar Parida and others v. State of Orissa, reported in 1975 Cri.L.J. 1212. Reliance is also placed on another decision of the Apex Court in the case of State of H.P. v. M.P. Gupta, reported in 2004 S.C.C. (Cri) 539. This submission, however, clearly overlooks the fact that the Applicants including Accused No. 6 are

implicated in offence punishable under section 120-B of the Code, one of conspiracy, and facilitating and assisting the organized crime syndicate to carry on unlawful activities. That act by no stretch of imagination can be part of the official duty warranting sanction under section 197 of the Code. It is well settled that when the charge is one of conspiracy or aiding any offence, sanction is not necessary. In any case, the Public Prosecutor has rightly placed reliance on the decision of the Apex Court in the case of Kalpnath Rai v. State (Through CBI) reported in (1997) 8 S.C.C. 732, wherein it is held that once cognizance of any offence under TADA has been taken validly by the Designated Court with a proper sanction, the Court is not disabled from convicting an accused for any other offence proved during the trial, whether or not sanction has been accorded in respect of such other offence. Reliance has also been placed on the decision of our High Court in the case of II (1993) CCR 1419 in the case of Biju Varghese & ors. v. The State of Maharashtra, which, in turn, relies upon the decision of the Apex Court in the case of Kishun Singh & ors. v. State of

Bihar, JT 1993 (1) S.C. 173. It has been observed by the Apex Court that it is essential to bear in mind that "cognizance is in regard to the offence and not the offender." Even in the present case, the cognizance of offence under the special enactment is already taken by the Designated Court. Merely because no sanction in respect of accused No. 6 is forthcoming, that cannot be the basis to hold that the Designated Court has no jurisdiction to remand the accused No. 6 in exercise of powers under section 309 of the Code, especially when the offence is not one relating to any discharge of official duties, which alone would warrant prior sanction. In any case, the learned Public Prosecutor, during the course of arguments, has placed on record order issued by the appropriate authority, namely, the Commissioner of Municipal Corporation dated September 21, 2004, in which it is rightly mentioned that the Applicants are employees of the Municipal Corporation of Greater Mumbai removable from office by the Municipal Corporation and/or by the Municipal Commissioner and not by the State Government, for which reason it is not necessary to accord sanction by him,

though the said officers would fall within the ambit of "public servant" as defined under section 21 of the Code. Even for this reason, the argument as canvassed before this Court regarding illegal continuation of accused No. 6 in custody does not commend to me.

8. The other technical objection that needs to be addressed is that during the course of hearing before this Court, the Public Prosecutor requested to allow her to rely upon the confessional statement of co-accused No. 9 Tariq Parveen recorded on 13th August 2004. In other words, this stated confessional statement has been recorded after filing of the charge sheet as against the Applicants, including accused No. 6. Two contentions have been advanced. Firstly, once charge sheet is filed, it is not open to the investigating agency to proceed with further investigation unless permission of the concerned Court is obtained under section 173(8) of the Code. Secondly, it is contended that the said document (confessional statement) is not part of the charge sheet and cannot be taken into account by this Court while considering the prayer for

bail of the Applicants. Both these objections are refuted by the learned Public Prosecutor. Insofar as the first objection is concerned, the learned Public Prosecutor submits that even if charge sheet has been filed, that does not preclude the investigating agency to continue with the further investigation. At best, it is desirable that the police should inform the Court and seek formal permission to make further investigation. To buttress this submission, reliance is placed on the decision of the Apex Court in the case of Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh and others, 1999 Cri.L.J. 3661. In para 10 of this decision, the Apex Court has observed that power of the police to conduct further investigation after laying final report is recognised under section 173(8) of the Code. It is further observed that even after the Court takes cognizance of any offence on the strength of police report first submitted, it is open to the police to conduct further investigation. The only rider provided is that it would be "desirable" that the police should inform the Court and seek formal permission to

make further investigation. This decision also takes the view that the accused need not be heard before the Court grants such permission for investigation or further investigation under section 173(8) of the Code. Reliance is also placed on the decision in the case of Ram Lal Narang v. State (Delhi Admn.) reported in A.I.R. 1979 S.C. 1791. This decision has been considered in the subsequent judgment of the Apex Court in Sri Bhagwan Samardha, etc.'s case (supra). Reliance was placed on the decision in Ram Lal Narang's case (supra) on the dictum in para 18, which, in turn, adverts to the decision of the Apex Court in the case of H.N. Rishbud v. The State of Delhi, reported in (1955) 1 SCR 1150, to hold that it is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the Court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it. As mentioned earlier, Ramlal Narang's case (supra) has been relied upon in the subsequent decision of the Apex Court in Sri Bhagwan Samardha, etc.'s

case (supra). On applying the principle stated therein, the argument canvassed before this Court regarding lack of authority of the investigating agency to proceed with further investigation will have to be negatived. The learned Public Prosecutor has placed emphasis on the fact that, the investigating agency had applied to the Designated Court for such permission by Miscellaneous Application No. 158 of 2004 and the same has been allowed. Counsel for the Applicants, however, submit that the order passed by the Designated Court on 23rd April 2004 on Miscellaneous Application No. 158 of 2004 is of no avail because the permission was not for further investigation as against the present Applicants. Assuming that there is substance in this submission, in view of the principle stated in Sri Bhagwan Samardha's case (supra), this argument need not detain us from considering the matter further.

9. Insofar as the second aspect canvassed on behalf of the Applicants is concerned, that the so-called confessional statement of accused No. 9, cannot be looked into, because it does not

form part of charge sheet, also does not commend to me. For the time being, we have to proceed on the basis that the statement of co-accused No. 9 recorded by the investigating agency is one under section 164 of the Code. If it is so, even if it is not part of the charge sheet, in view of section 207(iv) of the Code, the same is required to be furnished to the accused free of cost. In other words, even if it is not part of the charge sheet, it can be taken into account while considering the present application for bail as it is already taken on record by the Designated Court by an order dated 18th August 2004 and copy whereof has been produced in the present proceedings in terms of order dated 1st September 2004 passed by the Designated Court.

10. Before I proceed to consider the matter further, it will be appropriate to advert to the relevant provisions, which are invoked against the present accused. Section 3(2) and Section 24 of the MCOCA read thus :

> "3(2). Whoever conspires or attempts to commit or advocates, abets or knowingly

> facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs."
>
> "24. Whoever being a public servant renders any help or support in any manner in the commission of organised crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine."

In the present case, the Applicants are stated to have entered into conspiracy by assisting, abetting or knowingly facilitating the organised crime syndicate in its unlawful activities. The expression ‘abet’ has been defined in section 2(1)(a) of MCOCA, which reads thus :

> "‘abet’, with its grammatical variations and cognate expressions, includes, ---
>
> > (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime

> syndicate;
>
> (ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and
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> (iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;"

11. The next question that needs to be considered is : whether the materials on record would permit the Court to take the view that there are reasonable grounds for believing that the Applicants are not guilty of the alleged offences and that they are not likely to commit any offence while on bail, which are the pre-conditions for grant of bail in respect of offences punishable under the special enactment. Assuming that there is no material on record to show that the Applicants are likely to commit any offence while on bail especially having regard to the fact that the Applicants are stated to have committed alleged offence on account of their position as officials of the Greater Mumbai Municipal Corporation and, at present, as they

are facing departmental proceedings and are placed under suspension, there is no possibility of the Applicants committing any such offence while on bail, but that, by itself, cannot be the basis for enlarging the Applicants on bail. This Court will have to further probe and be satisfied that there are reasonable grounds for believing that they are not guilty of the alleged offences. It is in this context the prosecution case and the materials relied upon by the prosecution will have to be considered including the explanation offered by the Applicants. While doing so it will have to be borne in mind that the Applicants are charged with offence under section 3(2) of MCOCA read with section 120-B of the Code. To bring home the said offence, the material relied upon by prosecution should point out towards the knowledge of commission of illegal act or legal act by illegal means. Indeed, there can be no direct evidence to establish the charge of criminal conspiracy. That has to be inferred from various circumstances. According to the prosecution, the Applicants have knowingly abdicated their duties which resulted in assisting the member of the organized crime

syndicate to continue with the unlawful activity unabated. To get over this position, learned Counsel for the Applicants drew my attention to the various norms, notifications and circulars and contended that they have taken all the necessary steps, which they were expected to take, and for which reason it cannot be said that they have abdicated their duties in any manner whatsoever. It was, therefore, contended that if this premise of the prosecution falls to the ground, then the entire case against the Applicants would be only on the basis of surmises and conjectures. However, this submission clearly overlooks the charge against the Applicants. They along with other officials have been charged for having entered into criminal conspiracy by assisting accused No. 1, a member of organised crime syndicate headed by Dawood Ibrahim Kaskar, Iqbal Kaskar and Chhota Shakeel to construct shops illegally on the subject plot with full knowledge that the property in question belonged to C.P.W.D. reserved for municipal schools and garage. It is the prosecution case that the Applicants being public servants knowingly allowed the illegal construction on the

reserved plot and thereby rendered help and support to the members of the organised crime syndicate to construct shops illegally on the subject plot. The core issue that needs to be addressed in the present proceedings is whether there is any material to support this position. The prosecution to support its position has not only relied on the various correspondence, the complaints as well as the statements of the concerned witnesses, but is also relying on various circumstances, which would point finger towards the Applicants about their involvement in the commission of the alleged offence. It is seen from the record that the land originally belonged to C.P.W.D. and it was leased to one Munim in the year 1939. Assuming that the Global Marketing acquired rights in respect of the said property, the fact remains that the land was reserved for municipal schools and garage. The land was also offered to the Municipal Corporation in the recent past, but the Corporation insisted that the vacant possession of the said land should be handed over to the Corporation. All this was matter of record and known to the concerned officials. Inspite of

this position, the officials of the Corporation, in particular the Applicants herein, entertained proposal submitted on behalf of the Global Marketing by their Architect, Rais & Co. It cannot be disputed that the proposal for repair was submitted through Rais & Co., Architects, in respect of a prime property. It is unlikely that when such prestigious proposal is submitted, the real person involved or interested in the proposal will not be known or kept as a guarded secret. The statements of witnesses reveal that it was common knowledge in the vicinity and to all concerned about the involvement and interest of the prime accused, who are the members of the organised crime syndicate. Assuming that no fault can be found with the officials for having entertained the proposal, but what has been glossed over is that the proposal was simpliciter for repairs of the existing structures. Even accepting that the proposal has been legitimately cleared by the concerned officials, the fact remains that the permission was only for repairs of the existing structures. Instead of ensuring that the work undertaken on the site is in conformity with the said proposal, the concerned

officials obviously by turning a Nelson's eye allowed construction of new complex and yet certified the same to be in accordance with the sanctioned proposal. Moreover, the record does indicate that unauthorised structures have been erected on the disputed plot. The fact whether that happened before granting of completion certificate or thereafter makes no difference, because those structures were not only allowed to be erected on the site but also no corrective action taken at any stage. The prosecution case is one of concerned officials, including the Applicants herein, having entered into criminal conspiracy to assist the organised crime syndicate in their unlawful activities. If that is the prosecution case, it is inappropriate for this Court to dissect the materials on record so as to accept the hair-splitting argument canvassed before this Court, so as to hold that there are reasonable grounds for believing that the Applicants are not guilty of the alleged offences. On the other hand, to my mind, there is enough material on record to show that each of the Applicant was concerned at one stage or the other to ensure that the disputed property is

protected and corrective action be taken in respect of unauthorised construction. It is seen that repeated complaints have been made by the Forum for Justice, Mrs. Babita Pawar, Office bearer of Shiv Sena, Manav Joshi to various authorities and each of the Applicants had knowledge about the said complaints and the grievances made therein. Inspite of such knowledge, no corrective measures have been taken. Whereas, it is argued before this Court that the Ward Officer was not responsible because the matter was within the realm of Building Proposal Department and the officials of the Building Proposal Department, in turn, blame the other Department and the officials from the respective Departments claim that they have not committed any lapse whatsoever. The record, however, indicates that the accused No. 6 has also provided misleading information during the site inspection done by the Joint Municipal Commissioner. It was represented by him that the construction on the site was in accord with the permission of Building Proposal Department, when it was not. Reference can also be made to the communication sent by the accused No. 6 stating

that no action was pending and that the work on the site was in progress as per the approved plans. Taking totality of the materials into account, coupled with the confessional statement of accused No. 9, which has now been placed on record, which clearly refers to the amenability of accused No. 6 as the accused No. 9 is confident that the illegal construction referred to in the discussion would be made legal with the help of accused No. 6. The statements of witnesses relied upon by the prosecution supports the prosecution case that grievances were made at several levels at the relevant time about the unauthorised construction and illegal activity on the site at the instance of the anti-social elements. Insofar as the Applicants herein are concerned, their role is from the stage of submission of proposal till the issuance of completion certificate and for assisting or facilitating the unauthorised construction carried on the site even thereafter. The material on record supports the prosecution case that at every stage, the officials of the Corporation by turning a Nelson’s eye assisted the organised crime syndicate to carry on

construction of shops illegally on the subject plot, which was reserved for municipal schools and garage and that they had knowingly allowed and facilitated accused No. 1 with the said construction. It is seen that the ultimate offence consists of a chain of actions. Accordingly, it is not necessary for the prosecution to establish to bring home the charge of conspiracy that each of the conspirator had the knowledge of what the collaborator would do, so long as it is known that the colloborator would resort to unlawful activities. The knowledge of commission of illegal act or legal act by illegal means by the colloborator is writ large from the attending circumstances. Although my attention has been drawn to all the relevant documents, I do not think it necessary to analyse each material separately in the present Judgment, as at this stage, what is relevant to be considered is whether on scrutiny of these materials it is possible for this Court to record satisfaction that there are reasonable grounds for believing that the Applicants are not guilty of the alleged offences. In my opinion, the answer is plainly in the negative against the

Applicants herein.

12. Counsel for the Applicant - Accused No. 6 - relying on the various instructions, notifications and circulars would contend that the accused No. 6 was under no obligation with regard to the unauthorised work carried on the site, being the Ward Officer of ‘A’ Ward, as the matter was pending with the Building Proposals Department. This argument, though seems to be attractive, is devoid of any merits. As mentioned earlier, the attempt of each of the Applicant before this Court is to persuade the Court to hold that he was not individually responsible in any manner. It is seen that the prosecution case is one of criminal conspiracy entered into by the officials of the Corporation, in particular the Applicants herein. Merely because the instructions, notifications or circulars would not make the accused No. 6 responsible for the unauthorised work undertaken during the pendency of proposal before the Building Proposals Department, that would not extricate the Applicant - Accused No. 6 - from the charge, which is supported by materials on

record, which includes the complaints made from time to time including levelling allegation against the Accused No. 6 and no corrective action taken nor any report made to the higher authorities about the necessity of handling the situation in proper perspective. It cannot be forgotten that the Applicant - Accused No. 6 was at the topmost post in the Ward and responsible to the Zonal D.M.C. and Municipal Commissioner. Besides, it appears from the materials on record that this Applicant provided incorrect information to the Joint Municipal Commissioner that the work on the site was as per the proposal with the Building Proposals Department. This is so, because the proposal was in respect of repairs of the existing structures but the work actually undertaken was erection of a new complex; moreover during the visit by the Joint Municipal Commissioner, during which the Applicant - Accused No. 6 - was accompanying him, it was noticed that new construction has been put up. Besides, the accused No. 6 has given endorsement that no action was pending though he had knowledge about the unauthorised construction. The confessional statement of

accused No. 9 which has been pressed into service by the prosecution before this Court does indicate the proximity of the prime accused and their confidence to get the matter legalised through Applicant - Accused No. 6. The prosecution besides relying on the official communications has also relied on the statements of other officials of the Corporation as well as of other persons involving this accused. My attention was also drawn to the telephonic conversation between Iqbal Kaskar and Tanwar Builder which makes reference to the fact that B.M.C. officials have been managed. The statements of relevant witnesses also support the prosecution case that the officials of the Corporation entered into conspiracy to assist accused No. 1 for construction of shops illegally. It is not possible at this stage to take the view that there are reasonable grounds for believing that the accused No. 6 is not guilty of the alleged offence.

13. Insofar as accused Nos. 7 and 8 are concerned, both are from Building Proposals Department. Accused No. 7 was Executive

Engineer during the relevant time and accused No. 8 was the Assistant Engineer. From the job description, the officials of the Building Proposals Department were obliged to ensure and make proper scrutiny that the proposal as submitted was legitimate. As the subject land was already reserved for municipal schools and garage and in fact was offered to the Corporation, the officials were expected to bear this in mind. Nonetheless, the officials proceeded to scrutinise the proposal and accorded permission to proceed with the work as per the proposal. What is intriguing to note is that the work which was carried on the site was not in conformity with the proposal, inasmuch as, instead of repairs, new structure was erected. It was the primary responsibility of the officials of the Building Proposals Department to stop such activity. The argument, however, canvassed before this Court is that assuming that such lapse has been committed by the concerned officials, that by itself would not permit invocation of provisions of the special enactment, as has been done. This submission overlooks that the materials on record does

indicate that the officials allowed the accused No. 1, who had share in the Global Marketing and who was member of organised crime syndicate, to carry on the construction of shops illegally on the subject property, knowing full well that the property was reserved plot for municipal schools and garage, thereby assisting and facilitating the organised crime syndicate in its unlawful activities. Moreover, the work which was carried on was not in conformity with the proposal and yet no corrective measures were taken by the concerned officials at the appropriate time or even later on, including the present Applicants. Besides, insofar as accused No. 8 is concerned, during the house search, huge unaccounted money of Rs. 29 lakhs has been recovered from him. The argument canvassed on his behalf is that there is no material on record to trace this amount to the act of commission or omission of the said accused in relation to the activity for which the alleged offence is registered and the Applicant has been involved. It is not possible to pronounce upon the said aspect at this stage. For considering the application for bail, even this circumstance would tilt against the said

accused. In any case, from the other materials which are already on record, it is amply clear that the involvement of this accused in the alleged offence can be traced. For the abovesaid reasons, in particular in para 11, and on scrutiny of the materials on record, it is not possible to hold that there are reasonable grounds for believing that the Applicants herein - Accused Nos. 6, 7 and 8 - are not guilty of the alleged offences. If it is so, the applications for bail as filed by them should fail.

14. As mentioned earlier, the Applicants, Accused Nos. 6, 7 and 8, have been released on interim bail and they were allowed to continue on same bail by the Designated Court even while dismissing their interim bail application. During the pendency of the present applications, that arrangement was continued. However, as it is not possible to hold that the conditions specified in section 21(4) of the MCOCA have been fulfilled, this Court will have no jurisdiction to permit the Applicants to remain on bail. The Applicants have already surrendered before this

Court, as has been mentioned in the earlier part of this Judgment. In this peculiar situation, the State will have to take the Applicants into custody forthwith. The Public Prosecutor is directed to make necessary arrangements to take over the custody of the Applicants, who have surrendered before this Court and are present in the Court.

15. Accordingly, all the three applications are dismissed. The custody of the Applicants is directed to be handed over to the Officer of the Respondent State, who is present in the Court, who, in turn, shall produce the Applicants before the Designated Court and seek necessary directions in accordance with law.

(A.M.KHANWILKAR,J.)